

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

**MARFORK COAL COMPANY, INC., a
West Virginia corporation,**

Plaintiff,

v.

CIVIL ACTION NO. 5:10-cv-0069

**DAVID AARON SMITH, AMBER NITCHMAN,
ERIC BLEVINS, JOSHUA FRANCISCO GRAUPERA
and ISABELLE ROZENDAAL,**

Defendants.

**PLAINTIFF'S SUPPLEMENTAL REPLY IN SUPPORT
OF ITS MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff Marfork Coal Company, Inc. ("Marfork"), by counsel, submits this
Supplemental Reply in Support of its Motion for Preliminary Injunction.

1. Marfork operates several mining related facilities in Raleigh County, West Virginia, which include, among other things, several mines, a coal preparation plant, and an office building (collectively "Marfork's Mining Property").
2. On February 18, 2010, Michael Lee Roselle, Joseph Hampsher, and Tom Smyth (collectively, "the Trespassers") entered onto Marfork's Mining Property in Raleigh County without consent or authorization, thereby trespassing.
3. The Trespassers surreptitiously made their way to the main office building at Marfork's Mining Property and chained themselves to chairs in the lobby of that building. The office building is the central location from which Marfork manages activities on its Mining Property.

4. Upon information and belief, the Trespassers purported purpose in trespassing was to protest Marfork's mining activities.
5. The menacing actions and behavior of the Trespassers made Marfork members in their vicinity feel threatened and unsafe and caused one Marfork member to suffer from physical and/or psychological trauma resulting in this member being transported to Raleigh General Hospital for observation and/or treatment at the direction of the WV State Police who responded to this trespass.
6. Marfork promptly called the West Virginia State Police and the State Police the Trespassers were arrested upon the arrival of the State Police at the office building at Marfork's Mining Property trespassing, conspiracy and obstructing an officer.
7. Michael Lee Roselle is a named defendant in an action brought by Marfork and other subsidiaries of A.T. Massey Co. and Massey Energy Co. in the Circuit Court of Raleigh County, West Virginia. On July 17, 2009, Judge Burnside of the Raleigh County Circuit Court entered a Preliminary Injunction Order that, among other things, enjoined Roselle, his fellow defendants, "and any persons or entities acting as agents of or in concert with the named Defendants who receive actual notice of the Preliminary Injunction Order by personal service or otherwise" from trespassing or congregating on Marfork's Mining Property. A copy of the Preliminary Injunction Order entered by the Circuit Court of Raleigh County was provided to the Court as an exhibit during the January 26, 2010, hearing on the Motion for Temporary Restraining Order.
8. Hampsher and Smyth (and unknown others) acted in active concert and participation with Roselle and served as Roselle's agents in committing this trespass.

9. Michael Lee Roselle has been arrested on three previous occasions for trespassing on the property of Marfork and other entities related to A.T. Massey Co. and Massey Energy Co.
10. Roselle is quoted in a press release from Climate Ground Zero as saying “I won’t stop breaking the law until they do,” referring to Marfork.
11. Marfork filed a Motion for a Rule to Show Cause why Trespassers are not in contempt of Court for violating the Raleigh County Circuit Court’s Preliminary Injunction Order on February 18, 2010.
12. Upon information and belief, Roselle is the founder, leader, and/or director of Climate Ground Zero.
13. Upon information and belief, Hampsher and Smyth are affiliated with Climate Ground Zero.
14. The Defendants in this case are also associated and affiliated with Climate Ground Zero.
15. The Defendants and others specified by this Court’s Temporary Restraining Order – including those acting in concert or participation with them who have actual notice of the Temporary Restraining Order – are also enjoined from trespassing on Marfork’s Mining Property.

MARFORK COAL COMPANY, INC.,

BY: SPILMAN THOMAS & BATTLE, PLLC

/s/ Samuel M. Brock III

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Beckley Division**

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Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of February, 2010, I have electronically filed the foregoing **PLAINTIFF'S SUPPLEMENTAL REPLY IN SUPPORT OF ITS MOTION FOR PRELIMINARY INJUNCTION** with the Clerk of the Court using the CM/ECF system, which will send notification to the following:

Thomas A. Rist, Esquire
FORMAN & RIST
343 Prince Street
Beckley, WV 25801

Roger Forman, Esquire
FORMAN & RIST
100 Capital Street, Suite 400
Charleston, WV 25301

I have also served this document via U.S. Mail, postage prepaid as follows:

Michael Lee Roselle
123 Ford Addition
Rock Creek, WV 25174
Pro Se Defendant

Joseph Hampsher
813 Beech Avenue
Charleston, WV 25302
Pro Se Defendant

Thomas Francis Smyth
270 Woodland Place
White Plains, NY 10606

and

Thomas Francis Smyth
123 Ford Addition
Rock Creek, WV 25174
Pro Se Defendant

/s/ Samuel M. Brock III
Andrew B. McCallister (WV Bar No. 10026)